

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

# THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtor.

In re:

# THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF  
PUERTO RICO,

Debtor.

**OBJECTIONS OF THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD  
FOR THE COMMONWEALTH OF PUERTO RICO, AS REPRESENTATIVE OF  
DEBTOR, TO MOVANTS' DECLARATIONS AND EXHIBIT LISTS**

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), for itself and as representative for debtor the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS” or “Debtor”), pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act*, codified at 48 U.S.C. §§ 2101-2241 (“PROMESA”), respectfully submits its unresolved objections to declarations and exhibits identified on Movants’ exhibit list in accordance with the Court’s order [ECF No. 593 in Case No. 17-bk-03566].

The Oversight Board reserves the right to interpose additional objections to the introduction of evidence in view of the Court’s Orders issued today in Case No. 17-AP-213 [ECF No. 251] and in this proceeding [ECF No. 606 in Case No. 17-bk-03566].

**I. UNRESOLVED OBJECTIONS TO DECLARATION OF FATEN SABRY IN CONNECTION WITH MOTION OF CERTAIN SECURED CREDITORS OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO FOR RELIEF FROM THE AUTOMATIC STAY [ECF NO. 575-2].**

<b>Decl. ¶</b>	<b>Evidence:</b>	<b>Grounds for Objection:</b>
2	[Objection to Exhibit A]  Attached as <u>Exhibit A</u> hereto is a true and correct copy of the <i>Expert Report of Faten Sabry, Ph.D.</i> that I prepared along with other NERA personnel working at my direction. The report was produced to the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, the Commonwealth of Puerto Rico, the Puerto Rico Fiscal Agency and Financial Advisory Authority, and the Financial Oversight and Management Board for Puerto Rico on May 30, 2019.	Relevance (Fed. R. Evid. 402), Improper Expert Testimony (Fed. R. Evid. 702), Inadmissible Expert Evidence (Fed. R. Evid. 703):  Dr. Sabry’s opinions concerning PayGo fees will not assist the Court as trier of fact to determine “whether bondholders have any security interest in employer payments under the PayGo system established by the Pension Reform Legislation,” whether PayGo payments constitute “rights arising out of” or “identifiable proceeds” of employer contributions, or whether the Pension

Decl. ¶	Evidence:	Grounds for Objection:
		Reform Legislation was a “species of disposition of ERS employer contributions.” <i>See</i> ECF No. 544 at 5, 6. Additionally, to the extent Movants seek to admit evidence made available to Dr. Sabry that is not otherwise in admissible form, such evidence should be excluded.
3	<p>[Objection to Exhibit B]</p> <p>Attached as <u>Exhibit B</u> hereto is a true and correct copy of the <i>Rebuttal Expert Report of Faten Sabry, Ph.D.</i> that I prepared along with other NERA personnel working at my direction. The report was produced to the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, the Commonwealth of Puerto Rico, the Puerto Rico Fiscal Agency and Financial Advisory Authority, and the Financial Oversight and Management Board for Puerto Rico on June 12, 2019.</p>	<p>Relevance (Fed. R. Evid. 402), Improper Expert Testimony (Fed. R. Evid. 702), Inadmissible Expert Evidence (Fed. R. Evid. 703):</p> <p>Dr. Sabry’s opinions criticizing Mr. Malhotra’s calculation of the net present value of PayGo fees Movants claim is their collateral will not assist the Court as trier of fact because Dr. Sabry does not perform a net present value analysis or opine as to an appropriate discount rate to perform that analysis. Additionally, to the extent Movants seek to admit evidence made available to Dr. Sabry that is not otherwise in admissible form, such evidence should be excluded.</p>

**II. UNRESOLVED OBJECTIONS TO DECLARATION OF ANDREW A. SAMWICK IN CONNECTION WITH MOTION OF CERTAIN SECURED CREDITORS OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO FOR RELIEF FROM THE AUTOMATIC STAY [ECF NO. 575-3].**

Decl. ¶	Evidence:	Grounds for Objection:
2	<p>[Objection to Exhibit A]</p> <p>Attached as <u>Exhibit A</u> hereto is a true and correct copy of the <i>Expert Report of Andrew A. Samwick, PHD.</i> that I prepared. The report was produced to the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, the Commonwealth of Puerto Rico, the Puerto</p>	<p>Relevance (Fed. R. Evid. 402), Improper Expert Testimony (Fed. R. Evid. 702), Inadmissible Expert Evidence (Fed. R. Evid. 703):</p> <p>Dr. Samwick’s opinions concerning whether pension reform legislation creating the PayGo system reflects only “inconsequential” changes from the pre-</p>

Decl. ¶	Evidence:	Grounds for Objection:
	Rico Fiscal Agency and Financial Advisory Authority, and the Financial Oversight and Management Board for Puerto Rico on May 30, 2019.	2017 ERS pension system “in economic terms” is not relevant to the questions before the Court; is not based on accepted analysis in the field of economics; cannot be admitted for the purpose of interpreting Act 106; and will not assist the Court as trier of fact to address the central issues at the July 2 hearing. Additionally, to the extent Movants seek to admit evidence made available to Dr. Samwick that is not otherwise in admissible form, such evidence should be excluded.

**III. UNRESOLVED OBJECTIONS TO HEARING EXHIBIT LIST OF CERTAIN SECURED CREDITORS OF THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO DATED [AS REVISED]<sup>1</sup>**

Ex. #	DESCRIPTION	Unresolved Objections
5.	Draft Memorandum of Understanding between the Commonwealth, ERS, and AAFAF re: Payment of Pension and Other Benefits	402, 602, 703, 802, 901
11.	Commonwealth Revised Baseline Projections, dated December 20, 2016	402, 403, 901
14.	E-mail from Omar E. Rodriguez Perez to Gilberto Reyes Malave and Others re: Pay Go, dated July 7, 2017	402, 403, 602, 901, MIL
15.	Puerto Rico Treasury Department Circular Letter No. 1300-46-17, dated June 27, 2017 (Spanish version)	402, 403, 602, 901, MIL; DPR Local Rule 5
17.	E-mail from Brian P. Biggio (Conway MacKenzie) to Francisco Pena Montanez re: FY18 Budgeted Pay-Go by Agency, dated September 11, 2017	402, 403, 602, 703, 802, 901, MIL
18.	Government Committee Presentation on Status of the Trusts of the Government Employees Retirement System and the Judiciary Retirement System, dated March 15, 2017	402, 403, 602, 703, 901

<sup>1</sup> The unresolved objections are identified by reference to the applicable Federal Rule of Evidence (e.g., 402, 802), by cited Local Rule, or by “MIL” in reference to materials excluded by the Court’s Order granting AAFAF’s motion *in limine* [ECF No. 544 in Case No. 17-bk-03566].

Ex. #	DESCRIPTION	Unresolved Objections
28.	AAFAF Summary of Bank Account Balances for the Government of Puerto Rico and its Instrumentalities, dated April 30, 2019	403, 602, 703, 901
30.	AAFAF Presentation on PayGo Payments and Individual Contributions Debt by Entity dated April 15, 2019	402, 403, 602, 703, 802, 901
31.	March 14, 2019, news article from Reorg Research, Inc. titled Gov. Rosselló Warns Fiscal Challenges Will Make Some Municipalities Inoperable Within 5 Years Absent Structural Reform, Acknowledges Opposition to County Plan	402, 403, 802, 901
32.	March 15, 2019, news article from Reorg Research, Inc. titled Gov. Rosselló Says Administration Will File Legislation to Create County System of Government, Cites Potential Annual Savings Between \$600M and \$1B	402, 403, 802, 901
34.	Municipality of Ponce Audit Report (Mar. 4, 2019)	402, 403, 703, 802
35.	El Nuevo Dia article titled Mayors denounce errors in the PayGo (Jul. 27, 2018)	402, 403, 802, 901
37.	Act 29-2019	DPR Local Rule 5
39.	Article titled San Juan Mayor Discusses Order in Local Pay-Go Lawsuit, Skips Oversight Board Meeting at CRIM Based on City's Pending Lawsuit Against Board published by Reorg Research, Inc. and dated June 11, 2019.	402, 403, 802, 901
40.	May 29, 2019, municipality of San Juan Sworn Complaint against the ERS, the Puerto Rico Treasury Department, the Retirement Board of the Government of Puerto Rico and the heads of the entities in their official capacity in the San Juan Court of First Instance	402, 403, 802, 901
41.	June 10, 2019, Motion to Dismiss and, In the Alternative, In Opposition to Preliminary and Permanent Injunction and Mandamus Petition in municipality of San Juan suit in Court of First Instance	402, 403, 802, 901
43.	Unofficial Transcript, Altair Global Credit Opportunities Fun (A), LLC, et al., v. Garcia-Padilla, et al., No. 16-2433	402, 403, 802, 901
46.	Email from Maria Gonzalez Garay to Gerardo Portela Franco re: Progress Update on Budget Process, dated April 21, 2017	403, 602, 901, MIL, D.P.R. Local Rule 5

Ex. #	DESCRIPTION	Unresolved Objections
47.	Brief in Opposition to Motion for Relief From the PROMESA Automatic Stay filed by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico's	402, 403, 802, 901
48.	Brief in Opposition to Motion for Relief From the PROMESA Automatic Stay filed by the Commonwealth of Puerto Rico	402, 403, 802, 901
49.	Brief for the Employees Retirement System of the Government of the Commonwealth of Puerto Rico	402, 403, 802, 901
50.	Brief for Alejandro Garcia-Padilla (then-Governor of Puerto Rico), Juan C. Zaragoza-Gomez (then-Secretary of Treasury of Puerto Rico), Luis G. Cruz-Batista (Director of the Puerto Rico Office of Management and Budget), and Carmen Villar-Prados (then-Executive Director of the Puerto Rico Highways and Transportation Authority)	402, 403, 802, 901
51.	Brief of Amicus Curiae Financial Oversight and Management Board for Puerto Rico in Support of Respondents-Appellees Urging Affirmance of the District Court Order	402, 403, 802, 901
52.	ERS Circular Letter No. 2019-01 from Luis Collazo re: Employer and Individual Contributions Pursuant to Act 70 of July 2, 2010 and Act 211 of December 8, 2015, dated August 29, 2018	402, 403, D.P.R. Local Rule 5
53.	June 24, 2019 article from Reorg Research, Inc. titled Puerto Rico House Passes \$9.188B Fiscal 2020 Budget Bill, Separate \$286M Resolution to Cover Municipal Pay-Go and Health Plan Contributions Out of General Fund	402, 403, 602, 802, 901
55.	Email communication Conway Mackenzie, AAFAF, Treasury Department, and ERS	403, 602, 802, 901, MIL

Respectfully submitted,

Dated: June 27, 2019  
New York, NY

/s/ Margaret A. Dale  
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Management Board for Puerto Rico, as  
representative of the Employees Retirement  
System of the Government of the  
Commonwealth of Puerto Rico*

**CERTIFICATE OF SERVICE**

I hereby certify that, on June 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Luis F. del Valle-Emmanuelli  
Luis F. del Valle-Emmanuelli